

July 24, 2008

Barbara A. Sears
301.961.5157
bsears@linowes-law.com

Mayor Susan Hoffmann
Mayor of the City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: 12720 Twinbrook Parkway- Letter in support of proposed zoning in the Draft Zoning Ordinance

Dear Mayor Hoffman and Members of the City Council:

This firm represents AvalonBay Communities, Inc. ("AvalonBay"), the owner of 12720 Twinbrook Parkway (the "Property"). The Property consists of 4 acres and is bounded by Ardennes Avenue to the west, Halpine Road to the north and Twinbrook Parkway to the east. AvalonBay supports the recommendations in both the Draft Zoning Ordinance and Sectional Map Amendment (collectively "DZO") and the Twinbrook Neighborhood Plan to zone the Property Mixed-Use Businesses ("MXB"). This letter recommends possible amendments to Article 7 to clarify and avoid unnecessary duplication in the process for approving a Project Plan and a Site Plan when a particular project is consistent with the applicable master plan.

Consolidation of the Project Plan and Site Plan processes for projects that are consistent with a Master Plan

AvalonBay respectfully requests that the Mayor and Council modify the DZO to permit the consolidation of the Project Plan and Level 2 Site Plan review processes if a project is consistent with an applicable master plan and the City of Rockville Director of Planning ("Director") determines that such consolidation is appropriate. As will be discussed herein, requiring that an applicant whose project is consistent with an applicable master plan be required to complete a Level 2 Site Plan review **after** the approval of a Project Plan, even if the Director determines that such duplicative efforts are not necessary, is inefficient and time consuming for the interested parties, City and applicant.

1. Background

As currently drafted, the DZO mandates that the Level 2 Site Plan review can only occur **after** the approval of the Project Plan. See Section 25.07.06(23). By way of background, in addition to requiring up to three separate Project Plan application reviews, the Project Plan review process requires a Pre-Application Area Meeting and possibly two additional Area

Mayor Susan Hoffmann
July 24, 2008
Page 2

Meetings with neighbors residing within 1500 feet of the Property. In addition, the Project Plan review process requires that the neighbors, applicant and Staff participate in a Joint Mayor and Council/Planning Commission Initial Review meeting, a Planning Commission Hearing, and a Mayor and Council Hearing. *See* Section 25.07.06.

Likewise, the Level 2 Site Plan review process requires a Pre-Application Area Meeting and an additional Area Meeting with the neighbors residing within 1000 feet of the project area as well as a final review during a public meeting of the Planning Commission. For a full description of the procedural requirements for Project Plan and Level 2 Site Plan review processes, attached hereto is a copy of DZO Sections 25.07.04 and 25.07.06 at Exhibit "A". When discussed collectively herein the Project Plan and the Level 2 Site Plan processes will be referenced as the "Processes".

2. Mandating the Site Plan Review to Occur After Approval of the Project Plan Rather than Permitting Concurrent Processes is Overly Burdensome for the Interested Parties, City and Applicant.

First, requiring the Site Plan process to occur after the approval of the Project Plan places a great, and indeed, unnecessarily duplicative, burden on a proposed project's interested parties. Specifically, this mandatory two-tiered process requires the same parties of interest to attend two sets of Pre-Application and Area meetings as well as two Planning Commission meetings. All of these meetings are in addition to the second Area meeting, the Joint Mayor and Council/Planning Commission Initial Review meeting and the Mayor and Council public hearing required as part of the Project Plan process. In sum, without the option of consolidating the Processes, the interested parties will be required to attend nine separate events for each project. Requiring interested parties to attend nine separate process meetings is unnecessarily burdensome and costly to all concerned. If the Processes had the option of being consolidated, then the number of meetings that interested parties would be required to attend would decrease to six. Six meetings are much more manageable than nine meetings, ensuring that the interested parties will have the ability and the stamina to remain involved during the entire process.

Second, requiring separate Project Plan and Site Plan reviews is also unnecessarily duplicative and burdensome for the City. If the Processes must be reviewed separately, Staff will be required to prepare for three separate Planning Commission and/or Mayor and Council hearings/meetings rather than two such meetings and to send out nine separate notices rather than six. Moreover, permitting consolidation would assist the Staff by allowing them to require an applicant to be more precise in its consolidated application and to show more detail at the combined application stage than would normally be required at the Project Plan application stage. Such action is beneficial to the City and the interested parties because it requires an

Mayor Susan Hoffmann
July 24, 2008
Page 3

applicant to present a more complete and polished application at the early stage, thereby saving time and money on changes to the plans throughout the process. Furthermore, the DZO should acknowledge the fact that all applicants will have had extensive meetings with Staff prior to filing the initial applications. Finally, for the reasons stated above, the Processes are also overly burdensome on applicants.

Therefore, AvalonBay would recommend that in a situation in which a specific project is consistent with the applicable master plan, the language of the DZO should provide the Director the flexibility to determine that an applicant could file a consolidated Project Plan and Site Plan application. In the DZO, as drafted, the Director has no ability to do so. This lack of flexibility works to unnecessarily tie Staff's hands by prohibiting them from allowing an applicant with a well-organized and fully vetted project to file a consolidated Project Plan and Site Plan application and to permit the Processes to proceed concurrently.

In order to accommodate this flexibility, we would suggest the following modifications to Section 25.07.06(23) (all modifications in bolded italics):

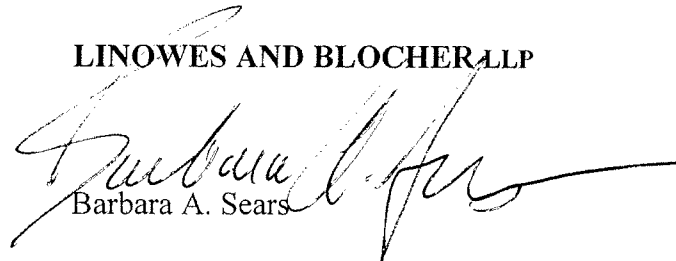
Section	DZO Section	DZO language	New Language with modification in bold italics
Subsequent Site Plan Review	Section 25.07.06(23)	All development approval under a project plan must obtain subsequent site plan approval in accordance with the Level 2 site plan review procedures under Section 25.07.04 above.	<i>Unless a project is consistent with the applicable master plan and the Director determines that a consolidated project plan and Level 2 site plan application is permitted for a specific project, all</i> development approval under a project plan must obtain subsequent site plan approval in accordance with the Level 2 site plan review procedures under Section 25.07.04 above.

Mayor Susan Hoffmann
July 24, 2008
Page 4

Thank you for your time and consideration in this matter. AvalonBay is eager to continue its work with the community and the Mayor and Council throughout the remainder of the DZO process.

Very truly yours,

LINOWES AND BLOCHER LLP



Barbara A. Sears

cc: Jonathan Cox
Amy Susskind
Samantha Mazo, Esq.
Jim Wasilak
Ann Wallas

- (a) *Notice* – Written notice of the meeting must be provided by the Chief of Planning in accordance with the provisions of Section 25.05.03.c.
 - (i) Notice must be sent to all property owners and residents within 750 feet of the boundaries of the area described in the application.
 - (ii) Notice must be sent no less than two (2) weeks prior to the meeting.
- (b) *Meeting Procedure* – The meeting must be conducted in accordance with the procedures contained in Section 25.06.06.e.3.
- 7. *Conditions of Approval* – Approvals may be subject to any condition that the ~~applicable Approving Authority~~ Chief of Planning finds necessary to protect the public health, safety, aesthetics, and welfare of the community and to ensure that the proposed use or development will be consistent with the purpose and intent of this Chapter.
- 8. ~~Validity~~ *Implementation Period* – The approval of a Level One (1) site plan is subject to the provisions of Section 25.04.06.b.
- 9. *Notice of Decision* – Notice of the Chief of Planning’s decision must be sent in accordance with the provisions of Section 25.05.06.
- 10. *Appeals* - Appeals of the Chief of Planning decision may be made in accordance with Section 25.04.06.c.

25.07.04 – Level Two (2) Site Plan Review

An application for a site plan review with seven (7) to nine (9) points, as determined in Section 25.07.02.b above, is subject to the following provisions:

- 1. *Pre-Application Staff Meeting* – The applicant must hold a meeting with staff of the City’s Community Planning and Development Services prior to submitting an application to outline the scope of the project. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.
- 2. *Pre-Application Area Meeting* – The applicant must hold an area meeting prior to submitting an application to outline the scope of the project. The applicant

must send notice to property owners and residents within 1,000 feet of the project area, no less than two (2) weeks prior to the meeting.

3. *Initial Application* – The applicant must file an initial application in accordance with the provisions of Article 5 and must provide a date for an area meeting.
4. *Notice* – The Chief of Planning must send notice of the application filing in accordance with the provisions of Section 25.05.03.c. to all property owners and residents within 1,000 feet from the boundaries of the area described in the application.
5. *Sign* – A sign must be posted in accordance with the provisions of Section 25.05.03.d.
6. *Area Meeting* – The applicant must then hold an area meeting to explain the plan to property owners and residents of the area where the development is proposed.
 - (a) The Chief of Planning must send notice of the area meeting to all property owners and residents within 1,000 feet of the boundaries of the area described in the application.
 - (b) The notice must be sent no less than two (2) weeks prior to the meeting.
7. *Revised Application* – The applicant must file a revised application, if needed based on comments received at the area meeting, in accordance with the provisions of Article 5.
8. *Notice* – The Chief of Planning must send notice of the Planning Commission meeting and any revised application, if applicable, and the date for the Planning Commission public meeting, in accordance with the provisions of Section 25.05.03.c.
 - (a) The Chief of Planning must send notice of the Planning Commission meeting to all property owners and residents within 1,000 feet of the boundaries of the area described in the application.
 - (b) The notice must be sent no less than two (2) weeks prior to the Planning Commission meeting.
9. *Final Review; Public Meeting* – The Planning Commission must conduct a final review of, and hold a public meeting on, the revised application for a site plan approval.



- (a) The Chief of Planning must send notice to all property owners and residents within 1,250 feet of the boundaries of the area described in the application.
 - (b) The notice must be sent no less than two (2) weeks prior to the Planning Commission meeting.
12. *Final Review; Public Meeting; Notice* – The Planning Commission must conduct a final review of the second revised application and conduct a public meeting thereon. ~~Notice of the meeting must be given in accordance with the provisions of Section 25.05.03.e.~~
- (a) ~~The Chief of Planning must send notice of the public meeting to all property owners and residents within 1,250 feet of the boundaries of the area described in the application.~~
 - (b) ~~The notice must be sent no less than two (2) weeks prior to the Planning Commission meeting.~~
13. *Conditions of Approval* – Approvals may be subject to any condition that the ~~applicable Approving Authority~~ Planning Commission finds necessary to protect the public health, safety, aesthetics, and welfare of the community and to ensure that the proposed use or development will be consistent with the purpose and intent of this Chapter.
14. ~~Validity~~ *Implementation Period* – The approval of a Level Three (3) site plan is subject to the provisions of Section 25.04.02.f.
15. *Notice of Decision* – The Chief of Planning must send notice of the Planning Commission's final review decision in accordance with the provisions of Section 25.05.06.

25.07.06 – Project Plan Review

An application for a site plan review with 13 or more points, as determined in Section 25.07.02.b above, is processed as a project plan review and is subject to the following provisions:

- 1. *Pre-Application Staff Meeting* – The applicant must hold a meeting with staff of the City's Community Planning and Development Services prior to submitting an application to outline the scope of the project. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.

2. *Pre-Application Area Meeting* – The applicant must hold an area meeting prior to submitting an application to outline the scope of the project. The applicant must send notice to property owners and residents within 1,500 feet of the project area no less than two (2) weeks prior to the meeting.
3. *Project Plan Application* – The applicant must file a ~~Conceptual~~ project plan application in accordance with the provisions of Article 5.
4. *Notice* – ~~The Chief of Planning must send notice of the application filing in accordance with the provisions of Section 25.05.03.c to all property owners and residents within 1,500 feet from the boundaries of the area described in the application.~~

The Chief of Planning must send notice of the joint Mayor and Council and Planning Commission public meeting and of the application in accordance with the provisions of Section 25.05.03.c.

- (a) The Chief of Planning must send notice to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.
 - (b) The notice must be sent no less than two (2) weeks prior to the meeting.
5. *Sign* – A sign must be posted in accordance with the provisions of Section 25.05.03.d.
6. *Joint Mayor and Council/Planning Commission Public Notice and Initial Review* – The Mayor and Council and the Planning Commission must hold a joint public meeting to conduct an initial review of the ~~Conceptual for a~~ project plan. ~~The Chief of Planning must provide notice of public meeting in accordance with the provisions of Section 25.05.03.c.~~
7. *Area Meeting* – The applicant must then hold a neighborhood meeting to explain the proposed project plan to residents and property owners of the area where the development is proposed.
 - (a) The Chief of Planning must send notice of the area meeting to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.
 - (b) The notice must be sent no less than two (2) weeks prior to the meeting.

8. *Revised Project Plan Application* – The applicant must file a revised application, based on comments received from the initial review and area meetings, in accordance with the provisions of Article 5.
9. *Notice* – The Chief of Planning must send notice of the Planning Commission public meeting and any revised application, if applicable, in accordance with the provisions of Section 25.05.03.c.
 - (a) The Chief of Planning must send notice to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.
 - (b) The notice must be sent no less than two (2) weeks prior to the Planning Commission meeting.
10. *Planning Commission Public ~~Notice and Meeting~~* - The Planning Commission must hold a public meeting on the revised application for a project plan. ~~The Chief of Planning must provide notice of public hearing in accordance with the provisions of Section 25.05.03.c.~~
 - ~~(a) The Chief of Planning must send notice of the area meeting to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.~~
 - ~~(b) The notice must be sent no less than two (2) weeks prior to the meeting.~~
11. *Planning Commission Comments and Recommendation* - At the conclusion of the ~~Public Hearing~~ public meeting the Planning Commission shall prepare its comments and recommendations to the Mayor and Council.
12. *Second Revised Project Plan Application* – The applicant ~~must~~ may file a second revised application, if needed, based on comments received at the Planning Commission meeting, for consideration by the Mayor and Council.
13. *Notice* – The Chief of Planning must send notice of the Mayor and Council public meeting and any revised application, if applicable, in accordance with the provisions of Section 25.05.03.c.
 - (a) The Chief of Planning must send notice to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.

- (b) The notice must be sent no less than two (2) weeks prior to the Mayor and Council meeting.

14. *Mayor and Council Public Notice and Hearing* – The Mayor and Council must hold a public hearing on the revised application for a project plan. ~~The Chief of Planning must provide notice of public hearing in accordance with the provisions of Section 25.05.03.c.~~

- ~~(a) The Chief of Planning must send notice of the public hearing to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.~~

- ~~(c) The notice must be sent no less than two (2) weeks prior to the meeting.~~

15. *Area Meeting* – If directed by the Mayor and Council, the applicant must then hold a second area meeting to explain the proposed plan to property owners and residents of the area where the development is proposed.

- (a) The Chief of Planning must send notice of the area meeting to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.

- (b) The notice must be sent no less than two (2) weeks prior to the meeting.

16. *Final Project Plan Application* – The applicant must file a final project plan application, based on comments received during the public hearing and from the area meeting, if any, in accordance with the provisions of Article 5.

17. *Notice* – The Chief of Planning must send notice of the Mayor and Council public meeting and any revised application, if applicable, in accordance with the provisions of Section 25.05.03.c.

- (a) The Chief of Planning must send notice to all property owners and residents within 1,500 feet of the boundaries of the area described in the application.

- (b) The notice must be sent no less than two (2) weeks prior to the Mayor and Council meeting.

18. *Decision* – Upon close of the public hearing record, the Mayor and Council will hold a public meeting and render a final decision on the proposed project

plan. If the application is approved, the Mayor and Council will establish a validity period for the project.

19. *Conditions of Approval* – Site plan approvals and project plan approvals may be subject to any condition that the ~~applicable Approving Authority~~ Mayor and Council finds necessary to protect the public health, safety, aesthetics, and welfare of the community and to ensure that the proposed use or development will be consistent with the purpose and intent of this Chapter.
20. *Validity Implementation Period of Approval* – The approval of a project plan by the Mayor and Council is subject to the provisions of Section 25.04.01.b.
21. *Notice of Decision* – The Chief of Planning must send notice of the Mayor and Council's decision on the final project plan in accordance with the provisions of Section 25.05.06.
22. *Preliminary Subdivision Plan Approval* - Approval of a project plan also constitutes approval of a preliminary plan of subdivision.
23. *Subsequent Site Plan Review* – All development approved under a project plan must obtain subsequent site plan approval in accordance with the level two (2) site plan review procedures under Section 25.07.04 above.

25.07.07 – Review of Applications for Special Exceptions

- a. *Pre-Application Staff Meeting* – The applicant must hold a meeting with staff of the City's Community Planning and Development Services prior to submitting an application to outline the scope of the project. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.
- b. *Notice of Meetings* – Notice shall be:
 1. In accordance with the provisions of Article 5 of this Chapter.
 2. The area of notice shall be based on the chart in Section 25.07.02.b above.
 - (a) For applications with zero (0) to six (6) points mailed notice shall be sent to all property owners and residents within 750 feet of the project area.
 - (b) For applications with seven (7) to nine (9) points mailed notice shall be sent to all property owners and residents within 1,000 feet of the project area.